

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

|                           |   |                   |
|---------------------------|---|-------------------|
| CHRISTOPHER L. SMITH,     | : | NO. 1:10-CV-00780 |
|                           | : |                   |
| Petitioner,               | : |                   |
|                           | : |                   |
| v.                        | : | <b>ORDER</b>      |
|                           | : |                   |
| WARDEN, LEBANON           | : |                   |
| CORRECTIONAL INSTITUTION, | : |                   |
|                           | : |                   |
| Respondent.               | : |                   |

This matter is before the Court on the Magistrate Judge's Report and Recommendation dated November 17, 2011 (doc. 28). Proper notice was given to the parties, including Petitioner, as required under 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(1)-(2). Said notice included an admonition that a failure to file objections to the Report and Recommendation in a timely manner "may forfeit rights on appeal" (doc. 21 at 3 (citing Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947, 950 (6th Cir. 1981) ("[A] party shall file objections with the district court or else waive right to appeal.")). To date, no objections have been filed.

The Magistrate Judge recommends that Petitioner's motion for a stay of the instant action be denied, that his petition for a writ of habeas corpus be denied with prejudice, and that his motion for leave to proceed in forma pauperis be denied as moot. With regard to the writ itself, the Magistrate Judge concluded that

Petitioner had procedurally defaulted his four claims for relief and had not demonstrated cause therefor or shown that a fundamental miscarriage of justice would result if these claims were not considered on their merits. Although no party, including Petitioner, objected to any portion of her report or her proposed recommendations, out of an abundance of caution we nonetheless conducted a de novo review. 28 U.S.C. § 636(b)(1)(C). Because we find said Report and Recommendation to be thorough, well-reasoned, and correct, we ADOPT AND AFFIRM it in all respects.

Thus, we DENY Petitioner's Motion to Stay (doc. 25), we DENY WITH PREJUDICE Petitioner's Petition Under U.S.C. § 2254 for Writ of Habeas Corpus (doc. 1), and we DENY AS MOOT Petitioner's Motion to Proceed in forma pauperis (doc. 26). We further FIND that a certificate of appealability should not issue in this matter, under the standard set forth in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), as "jurists of reason" would not find it debatable that this Court, having applied the procedural default doctrine, is correct in deciding that it is barred from reviewing the instant petition because Petitioner has waived the grounds set forth within. In addition, we CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal of this Order would not be taken in good faith; therefore, any application made to this Court to appeal in forma pauperis upon a showing of financial necessity will be DENIED. See Fed. R. App. P. 24(a)(3)(A); Kincade v. Sparkman, 117

F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: February 7, 2012

/s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge